

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(121)

CR No.2507 of 2015 (O&M)
Decided on: April 9, 2015.

Sardool Singh and others

.... Petitioners

Versus

Lakha Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Inderjit Sharma, Advocate,
for the petitioners.

M.M.S. BEDI, J (ORAL)

This is defendant's revision petition against the order passed by the trial Court as well as the lower Appellate Court, allowing the application of plaintiff-respondent No.1 under Order 39 Rules 1 and 2 CPC holding prima facie, the plaintiff-respondent No.1 in possession of the property in dispute as Pattedar and that he has not till date relinquished his right as a tenant.

Learned counsel for the petitioners submits that the defendants-petitioners, on the basis of an agreement of sale of 1998 has got better possession of title than the plaintiff-respondent No.1, as such the application under Order 39 Rules 1 and 2 CPC filed by the plaintiff-respondent No.1 to restrain the defendants-petitioners, should have been dismissed.

Counsel for the petitioners has placed reliance on **Bhola Singh**

Vs. Ratia 1988 (1) RLR 216, in support of his contentions.

I have heard learned counsel for the petitioners and gone through the facts and circumstances of the case. I have also considered the reasons recorded by the Courts below in allowing the application of plaintiff-respondent-tenant.

The application has been allowed on the basis of presumption that there is no document indicating that the plaintiff-respondent No.1 ever surrendered possession to the defendants-petitioners. In the absence of any documentary proof, the abrupt and stray entry of possession in favour of defendants has not been accepted, as the Court, prima facie, believed that no presumption will be attached to the revenue entries produced by the defendants-petitioners as there is no revenue record available indicating that the possession had ever been delivered to the defendants by plaintiff indicating the specific time. Adopting the principle of presumption of continuity regarding possession, the application has been allowed in favour of the plaintiff-respondent No.1.

The facts of **Bhola Singh's** case (supra) are not relevant for the present case. The defendants-petitioners does not appear to have better possessory title on the basis of the agreement of sale which prima facie does not call for any attention. The petitioners claim rights on the basis of an agreement of sale which till date has not been specifically performed or sought to be performed. The trial Court has considered the Jamabandi for the year 2006-07 in favour of the father of plaintiff-respondent No.1 and the order dated 08.10.2003 passed by the Assistant Collector 2nd Grade, Dera Baba Nanak indicating the cultivating possession of the plaintiff-respondent No.1, while allowing the application under Order 39 Rules 1 and 2 CPC.

An rebuttable presumption as attached to the khasra girdawaris relied upon by the defendants-petitioners pertaining to the property in dispute.

No ground is made out for interference in the order passed by the Courts below while deciding application under Order 39 Rules 1 and 2 CPC.

Dismissed.

(M.M.S. BEDI)
JUDGE

April 9, 2015
harsha